

# **CITIES AND TOWNS BULLETIN**

## **AND UNIFORM COMPLIANCE GUIDELINES**

### **ISSUED BY STATE BOARD OF ACCOUNTS**

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March 1995

#### **SCHEDULE OF EVENTS**

The Indiana League of Municipal Clerks and Treasurers' Annual Convention will be held May, 10, 11, and 12 at the Marriott in Fort Wayne, Indiana. The State Board of Accounts and State Board of Tax Commissioners will be conducting a one day accounting and budgeting workshop on the second day of the convention (Thursday - May 11). This second day of the convention will qualify as a State - called meeting day.

The State Board of Accounts Annual School for Clerk-Treasurers, City Controllers and Clerks will be held June 28 and 29, 1995 at the Marriott Hotel, 7202 East 21st Street, Indianapolis, Indiana.

Please mark these dates on your calendar. Explanatory letters with tentative agendas will be mailed to all fiscal officers concerning both meetings.

#### **DEPOSITING PUBLIC FUNDS**

The Depository Law, IC 5-13, provides that all public funds paid into the treasury of any city and town shall be deposited not later than the business day following the receipt of the funds on business days of the depository in one (1) or more depositories in the name of the city or town having control of the funds.

Funds of municipally owned utilities are public funds and shall be deposited accordingly.

On or before the fifth day of each month, the local officer responsible for the deposit of public funds shall file with the secretary of the board of finance a verified statement that reconciles, as of the last day of the proceeding month, the balance of public funds as disclosed by the records of the local officer. This would require the City Controller or the City Clerk-Treasurer to file the statement with the Mayor and Common Council and the Town Clerk-Treasurer to file the monthly statement with the Town Council (IC 5-13-6-1).

GENERAL OBLIGATION INDEBTEDNESS

Cities and towns can legally create interest bearing indebtedness against the taxing power of the city or town pursuant to various statutes. The following is a listing of the applicable statutes and a brief discussion of these statutes.

Statutory References

Cities - Temporary Loans

IC 36-1-4-9  
IC 36-4-6-20

Towns - Temporary Loans

IC 36-1-4-9  
IC 36-5-2-12

Cities - Permanent Loans - In the Form of Bonds or Other Evidences of Indebtedness

IC 36-1-4-9  
IC 36-4-6-19  
IC 5-1-11, IC 5-1-12, IC 5-1-13, IC 5-1-14 and IC 5-1-15  
IC 6-1.1-20

Towns - Permanent Loans - In the Form of Bonds or Other Evidences of Indebtedness

IC 36-1-4-9  
IC 36-5-2-11  
IC 5-1-11, IC 5-1-12, IC 5-1-13, IC 5-1-14 and IC 5-1-15  
IC 6-1.1-20

Cities and Towns - Funding and Refunding Indebtedness

IC 5-1-9-1

GENERAL OBLIGATION INDEBTEDNESS

-Continued-

General Provisions

State Statutes give the common council or the town council authority to make temporary loans in anticipation of current revenues of such city or town actually levied and in the course of collection for the fiscal year in which such loans are made, such loans to be authorized by ordinance. Temporary loans must be paid off within the year in which the loan is made.

There are also provisions made for cities and towns to make temporary loans of money for not more than five (5) years as long as the loan amounts do not exceed five percent (5%) of the city or town's total tax levy in the current year.

Permanent loans evidenced by bonds or other forms of indebtedness are authorized to be issued after the petition signed by owners of taxable real estate in such city or town has been filed with the common council or town council. Other requirements include an ordinance that the common council or town council has determined to issue the obligations petitioned for, a published notice to taxpayers of filing of said petition, a period of time after publishing such notice in which remonstrances may be filed, publications of notice of public sale of bonds or other evidences of indebtedness, appropriation of proceeds of the bond issue and approval of such appropriation by the State Board of Tax Commissioners in the regular legal manner.

Approval by the State Board of Tax Commissioners is required of all issues of general obligation indebtedness if the interest rate is in excess of eight percent (8%) per annum. [IC 6-1.1-20-7, as amended in IC 5-1-14-1 (b) (c)].

Temporary Loans in Anticipation of Tax Collections

A city or town may make temporary loans in anticipation of taxes actually levied and in course of collection to meet current operating expenses. Such loans shall be evidenced by temporary time warrants pledging a sufficient amount of the current revenues for the payment thereof and the interest thereon. The statute provides that such loans shall be authorized and sold in the same manner as permanent loans which would require advertising; however, a petition would not be necessary.

Temporary loans must be authorized by an ordinance of the common council or town council. The amount must be specified as well as the fund for the benefit of which the loan is to be made and the interest accruing on such warrants to date of maturity shall be added to and included in the face value thereof.

A temporary loan may be made in any sum of money not to exceed the uncollected and anticipated taxes for the current year.

GENERAL OBLIGATION INDEBTEDNESS

-Continued-

Temporary Loans in Anticipation of Tax Collections - Continued

IC 36-4-6-20 and IC 36-5-2-12 require temporary loans to be evidenced by a time warrant bearing a specified rate of interest from date of the loan to maturity date. IC 6-1.1-20-7 has removed the maximum interest rate but requires if the rate of interest is greater than eight percent (8%), the approval of the State Board of Tax Commissioners must be secured. (See IC 5-1-14-1(c)).

The loan must be repaid in the same current year in which it is made.

A temporary loan must be repaid from the fund to which the loan is receipted. The principal of a temporary loan may be repaid without an appropriation, but an appropriation is required for repayment of the interest on the temporary loan.

Suggested forms of "Notice of Receiving Bids for Temporary Loans" and "Tax Anticipation Time Warrant" which is similar to those now being used in some cities and towns follows. Please consult your city or town attorney for advice in this matter.

Sample of Notice of Receiving Bids for Temporary Loan

Notice is hereby given that the common council (or town council) of \_\_\_\_\_, in \_\_\_\_\_ County, Indiana, will receive sealed bids up to the hour of \_\_\_\_\_ (a.m. or p.m.) on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at their office at \_\_\_\_\_ street, \_\_\_\_\_, Indiana, for the following:

The proposal to loan the said city (or town) of \_\_\_\_\_ Indiana, \_\_\_\_\_ Dollars for the \_\_\_\_\_ Fund in anticipation of the current revenues of the city (or town), and for a term not to exceed \_\_\_\_\_ days.

Each bid shall stipulate the rate of interest to be charged. Each bid shall be accompanied by an affidavit that no collusion exists between the bidder and any other person relative to such bid.

Prior to maturity all or any amount of the principal may be prepaid with accrued interest to the date of prepayment.

All bids must be made in full compliance with the law governing such matter; and, the common council (or town council) reserves the right to reject any or all bids.

ATTEST:

Clerk: (City or Town) of \_\_\_\_\_

By: \_\_\_\_\_  
Mayor, City of \_\_\_\_\_  
(or President of Town Council  
Town of \_\_\_\_\_)

GENERAL OBLIGATION INDEBTEDNESS

-Continued-

Sample of Tax Anticipation Time Warrant

Principal \$ \_\_\_\_\_  
 Interest at \_\_\_\_\_% \$ \_\_\_\_\_  
 Total \$ \_\_\_\_\_

No. \_\_\_\_\_

CITY (OR TOWN) OF \_\_\_\_\_ TAX ANTICIPATION TIME WARRANT  
 \_\_\_\_\_ FUND

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the City (or Town ) of \_\_\_\_\_, in \_\_\_\_\_, County, Indiana, promises to pay the sum of \_\_\_\_\_ including interest on the principal amount of the warrant from the date hereof to maturity, payable out of which said taxes are now in course of collection for the \_\_\_\_\_ Fund of the City (or Town) of \_\_\_\_\_, with which to pay current operating expenses. This warrant may be prepaid on and after \_\_\_\_\_, 19\_\_\_\_, and prior to maturity at the principal amount hereof plus accrued interest to the date of prepayment.

This Tax Anticipation Time Warrant is one of a series of warrants aggregating a sum of \_\_\_\_\_, exclusive of interest added thereto to maturity, evidencing a temporary loan in anticipation of the taxes levied and in course of collection for the \_\_\_\_\_ Fund of said City (or Town).

Said temporary loan was authorized by an ordinance duly adopted by the Common Council (or Town Council) of the City (or Town) of \_\_\_\_\_, \_\_\_\_\_, 19\_\_\_\_, for the purpose of providing funds for the \_\_\_\_\_ Fund of said City (or Town) of \_\_\_\_\_, in compliance with an act of the General Assembly of the State of Indiana, entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all acts amendatory thereof and supplemental thereto, including particularly IC 36-4-6-20 and IC 36-5-2-12.

The consideration of said warrant is a loan made to the City (or Town) of \_\_\_\_\_ in anticipation of taxes levied for the \_\_\_\_\_ Fund of said City (or Town) for the year 19\_\_\_\_, payable in the year 19\_\_\_\_, and said taxes so levied are hereby specifically appropriated and pledged to the payment of said Tax Anticipation Time Warrant.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to the authorization, preparation, complete execution and delivery of said warrants have been done and performed as provided by law.

GENERAL OBLIGATION INDEBTEDNESS

-Continued-

Sample of Tax Anticipation Time Warrant - Continued

IN WITNESS WHEREOF, the City (or Town) of \_\_\_\_\_ has caused this warrant to be signed in its corporate name by its Mayor (or Town Council President) and attested by the Clerk of the City (or Town) of \_\_\_\_\_ and the corporate seal of said City (or Town) hereunto affixed.

Dated \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

CITY (OR TOWN) OF \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk: City (or Town) of \_\_\_\_\_

BY: \_\_\_\_\_  
Mayor, City of, \_\_\_\_\_  
(or President of Council, Town  
of \_\_\_\_\_)

SHORT-TERM BORROWING - CITIES

The legislative body may, by ordinance, make loans of money for not more than five (5) years and issue notes for the purpose of refunding those loans. The loans may be made only for the purpose of procuring money to be used in the exercise of the powers of the city, and the total amount of outstanding loans may not exceed five percent (5%) of the city's total tax levy in the current year (excluding amounts levied to pay debt service and lease rentals). Loans shall be made in the same manner as loans made under IC 36-4-6-19, except that:

- (1) The ordinance authorizing the loans must pledge to their payment a sufficient amount of tax revenues over the ensuing five (5) years to provide for refunding the loans; and
- (2) The loans must be evidenced by notes by the city in terms designating the nature of the consideration, the time and place payable, and the revenues out of which they will be payable. Notes issued are not bonded indebtedness for purposes of IC 6-1.1-18.5. (IC 36-4-6-20)

SHORT-TERM BORROWING - TOWNS

The legislative body may, by ordinance, make loans of money for not more than five (5) years and issue notes for the purpose of refunding those loans. The loans may be made only for the purpose of procuring money to be used in the exercise of the powers of the town, and the total amount of outstanding loans may not exceed five percent (5%) of the town's total tax levy in the current year (excluding amounts levied to pay debt service and lease rentals).

SHORT-TERM BORROWING - TOWNS

-Continued-

Loans shall be made as follows:

- (1) The ordinance authorizing the loans must pledge to their payment a sufficient amount of tax revenues over the ensuing five (5) years to provide for refunding the loans.
- (2) The loans must be evidenced by notes of the town in terms designating the nature of the consideration, the time and place payable, and the revenues out of which they will be payable.
- (3) The interest accruing on the notes to the date of maturity may be added to and included in their face value or be made payable periodically, as provided in the ordinance. Notes issued are not bonded indebtedness for purposes of IC 6-1.1-18.5 [IC 36-5-2-12]

TEMPORARY TRANSFERS TO DEPLETED FUNDS

IC 36-1-8-4 states:

"The fiscal body of a political subdivision may, by ordinance or resolution, permit the transfer of a prescribed amount, for a prescribed period, to a fund in need of money for cash flow purposes from another fund of the political subdivision if all these conditions are met:"

- "(1) It must be necessary to borrow money to enhance the fund that is in need of money for cash flow purposes."
- "(2) There must be sufficient money on deposit to the credit of the other fund that can be temporarily transferred."
- "(3) The prescribed period must end during the budget year of the year in which the transfer occurs."
- "(4) The amount transferred must be returned to the other fund at the end of the prescribed period."
- "(5) Only revenues derived from the levying and collection of property taxes or special taxes or from operation of the political subdivision may be included in the amount transferred."

IC 36-1-8-4 authorizes the governing body of any municipal corporation (the common council in a city and the town council in a town) to transfer, by ordinance or resolution, from any fund having a sufficient balance to any depleted fund. The time fixed by the ordinance or resolution for repayment of the temporary transfer may not extend beyond December 31 of the year in which the temporary transfer is made.

Funds advanced shall be derived from taxes on property, special taxes or any other revenue received from any operation of the municipal corporation. Any fund of a municipal utility would be eligible for temporary transfer to a depleted fund unless proceeds from the sale of bonds are specifically prohibited by the terms of the revenue bond ordinance.

TEMPORARY TRANSFERS TO DEPLETED FUNDS

-Continued-

Such temporary transfers should be effected by issuing a warrant and receipt for the amount of the transfer. The warrant should be endorsed and deposited in the depository account designated for the depleted fund. No appropriation is required either for the transfer or the repayment. Also, no interest should be charged on any such temporary transfer.

GRANT ANTICIPATION LOANS

IC 5-19-1.5 authorizes municipalities to borrow funds for a period not to exceed three years and may pledge for the payment of principal and interest therefor, the proceeds of a grant and any revenue which may be derived from the facility being constructed or improved by the proceeds of the note or notes.

The maximum amount of any loan shall not exceed eighty percent (80%) of the estimated amount of the grant in anticipation of which the loan is made.

Your city or town attorney should review the provisions of IC 5-19-1.5 for legal guidance of the municipality prior to utilizing this type of temporary loan.

FUNDING AND REFUNDING INDEBTEDNESS

Any city or town whose indebtedness is evidenced by bonds, notes, judgments, or other obligations issued, rendered, or negotiated by the city or town, may, for the purpose of funding or refunding the indebtedness, or any part thereof, reducing the rate of interest thereon, extending the time of payment and cancelling so much thereof as may be or become due, by the vote of two-thirds (2/3) of the members of the fiscal body of the city or town, issue its bonds, for an amount not exceeding in the aggregate the whole amount of the indebtedness of the city or town (IC 5-1-9-1).

LOANS BETWEEN MUNICIPALLY OWNED UTILITIES

IC 8-1.5-3-12 states:

"(a) A municipality may, by ordinance of its legislative body, borrow money from a utility owned by a municipality for current purposes in anticipation of taxes levied and to be collected during the current or following year."

"(b) The board may by resolution lend money to the municipality if the utility has on hand: (1) a surplus of cash exceeding by at least the amount loaned the sum of all amounts required to pay the indebtedness of the utility falling due during the current calendar year and the following year; (2) the amount necessary to meet current expenses during the year; and (3) the amount necessary to pay for improvements contemplated to be made during the current calendar year minus the estimated receipts during the calendar year.

LOANS BETWEEN MUNICIPALLY OWNED UTILITIES

-Continued-

"(c) A loan may not be made for the sum in excess of fifty percent (50%) of the amount estimated to be collected from anticipated taxes. The loan: (1) must be evidenced by an obligation of the municipality; (2) must be signed by the executive; (3) is due on or before thirty (30) days after the last day for the payment of anticipated taxes; and (4) may bear interest at any rate as determined by the board, payable at maturity.

"IC 8-1.5-3-11(f) states:

"A cash reserve fund, if authorized by ordinance, may be used to make loans to another utility owned by the same municipality, for periods not to exceed five (5) years, at any interest rate. The repayment of the loan and interest shall be returned to the cash reserve fund."

CUMULATIVE CAPITAL IMPROVEMENT FUND

(Cigarette Tax Distributions)

IC 6-7-1-31.1 states: "(a) The fiscal body of each city and the fiscal body of each town shall, by ordinance or resolution, establish a cumulative capital improvement fund for the city or town. Except as otherwise provided in subsection (b), the city or town may only use money in its cumulative capital improvement fund to:

- (1) purchase land, easements, or rights-of-way;
- (2) purchase buildings;
- (3) construct or improve city owned property; or
- (4) retire general obligation bonds issued by the city or town for one of the purposes stated in subdivision (1), (2), or (3)

The money in the city's or town's cumulative capital improvement fund does not revert to its general fund.

(c) Any city or town may at any time, by ordinance or resolution, transfer to its general fund or an authority established under IC 36-7-23, any monies derived under this chapter, which have been deposited in the city's or town's cumulative capital improvement fund."

The Attorney General in Official Opinion No. 15, dated May 25, 1965, held a city or town existing at the time of the last preceding U.S. decennial census continues to share in the cigarette tax distributions on this basis and not on the basis of any subsequent U.S. Census Bureau special census.

Official Opinion No. 15 also states a city or town coming into existence after the last preceding U.S. decennial census is entitled to share in the cigarette tax distributions.

CUMULATIVE CAPITAL IMPROVEMENT FUND  
(Cigarette Tax Distributions)  
-Continued-

Attorney General Official Opinion No. 32, August 18, 1965 states the term "capital improvement" as used in this statute does not contemplate the purchase of "major movable equipment" or any other personal property. The use of the CCIF fund for such purpose would be contrary to the express restrictive authority of the statute.

CRIMINAL HISTORY INFORMATION

Local law enforcement agencies may, on request for release or inspection of a limited criminal history, do the following:

- (1) Require a form, provided by them, to be completed. This form shall be maintained for a period of two (2) years and shall be available to the record upon request.
- (2) Collect a three dollar (\$3) fee to defray the cost of processing a request for inspection.
- (3) Collect a seven dollar (\$7) fee to defray the cost of processing a request for release. However, law enforcement agencies may not change a fee for requests received from the parent locator service of the child support bureau of the division of family and children.

Local law enforcement agencies shall edit information so that the only information released or inspected is information which has been requested and is limited criminal history information. (IC 5-2-5-7)

A local home rule ordinance would be required to enable a city or town law enforcement agency to collect such fees. All monies should be deposited in the municipality's general fund unless otherwise stated in the ordinance.